Supreme Court, U.S.
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No. 93 - 1145

In The
# Supreme Court of the United States
October Term, 1993

JOHN E. FILIOS, ET AL.
PETITIONERS

v.

COMMISSIONER OF REVENUE OF MASSACHUSETTS
RESPONDENT

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

## PETITIONERS' REPLY TO THE BRIEF IN OPPOSITION

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Pursuant to Rule 15.6 of the Rules of this Court, petitioners John A. Filios et al. submit this Reply to the Brief in Opposition to the Petition filed in this case.

## I. THIS CASE RAISES QUESTIONS OF NATIONAL IMPORTANCE.

The Respondent Commissioner of Revenue of Massachusetts asks this Court to deny the petition for a writ of certiorari on the grounds, among others, that petitioners' claims do not raise "issues of national importance warranting review by this Court." Respondents' Brief in Opposition at 13. The record now before the Court convincingly demonstrates the contrary.

Petitioners respectfully call to the Court's attention the brief amicus curiae filed in support of the petition by The Military Coalition, an organization representing over 1,900,000 men and women, living in all 50 states, who are retired, reserve or active members of the uniformed services. As the Coalition's brief points out, Massachusetts' policy of taxing federal military retirees' benefits while completely exempting benefits received by state and local retirees presents a threat to the ability of Congress to choose how to compensate the men and women responsible for our national defense, a consideration of obvious national importance. See U.S. Const., art. I, § 8, cl. 12, 13 and 14.

Further evidence that the decision of the Massachusetts Supreme Judicial Court does implicate matters of national significance is the fact that the Solicitor General has filed a brief amicus curiae supporting the petition on behalf of the United States. As the Solicitor General notes, "[t]he United States has a continuing interest in ensuring that its employees are not subjected to discriminatory tax treatment." Brief for the United States at 1.

The implications of the decision below go far beyond the 24,000 retirees living in Massachusetts whose tax bills are directly affected by Filios v. Commissioner of Revenue, 415 Mass. 806 (1993). The Solicitor General points out, "[i]f the decision in this case were allowed to stand, it would serve as a guidepost for States seeking to circumvent the clear restrictions imposed by 4 U.S.C. 111 and this court's prior decisions." Id. at 8.

As this Court recently noted, in a case involving application of 4 U.S.C. 111, the same statute at issue here, state courts have shown difficulty in accepting this Court's decisions in this area "as a controlling statement of federal law." Harper v. Virginia Department of Taxation, __ U.S. __, 125 L. Ed. 2d 74, 83-84 (1993). That strongly suggests that if the decision below is not corrected, other states will be prompt in following Massachusetts' "guidepost" on how states can circumvent section 111 and continue to tax federal workers while protecting their own employees from tax. See Brief for the United States at 8.

## II. THE PETITION IS TIMELY AS TO ALL PETITIONERS.

The Respondent Commissioner of Revenue appears to concede that the Petition in this case, which was filed on November 22, 1993, was timely as to all petitioners other than John A. and Eleanor G. Filios, the named appellants before the Massachusetts Supreme Judicial Court. Brief in Opposition at 13-14 (state court order "arguably gave other parties 90 days to file a petition [after October 26, 1993]"). This concession would seem to make the Commissioner's argument that the Petition was untimely as to John and Eleanor Filios almost entirely irrelevant.[1]

In any event, the Commissioner is clearly wrong. He correctly cites Rule 13 of the Rules of this Court as controlling on the timeliness of petitions for a writ of certiorari. Brief in Opposition at 13. However, he fails to note Rule 13.4 which specifically deals with the exact situation here. As the United

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1. From the outset this has been a test case pursued by the named parties on behalf of all military retirees living in the Commonwealth. Pet. A-4. Colonel and Mrs. Filios did not invest years of effort before state agencies and courts in order to obtain the refund of a few dollars for themselves. They sought, and continue to seek, to correct a wrong inflicted on all Massachusetts veterans.

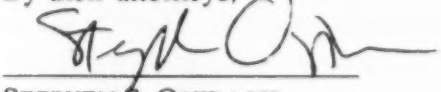
States notes (at 8, n. 6), that Rule provides that "if a petition for rehearing is timely filed in the lower court by any party in the case, the time for filing the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or the entry of a subsequent judgment." (Emphasis supplied). Thus, contrary to the Commissioner's belief, Brief in Opposition at 14, the October 26, 1993, Order of the Massachusetts court did extend the time for Colonel and Mrs. Filios to file.

In light of Rule 13.4, the last date for filing a petition for all petitioners, including Colonel and Mrs. Filios, was 90 days from the date of the Supreme Judicial Court Order of October 26, 1993. Pet. A. 52. Since the petition here was filed on November 22, 1993, it was timely.

## CONCLUSION

For the foregoing reasons and those stated in the Petition, petitioners request that their application for a writ of certiorari be granted.

Respectfully submitted,
John E. Filios et al.
By their attorneys,



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